IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2133 OF 1997

R.H. Keswani,
Proprietor of R.S. Engineers,
having Office at 507,
Sawan Bhawan, Mumbai-400 014 ....Petitioner.

V/s

1. Desmet Chemford Engineering
Private Limited, a Company
incorporated under the Companies
Act, having its address at
703, Raheja Chambers, 213,
Nariman Point, Mumbai 400 021.

2. State of Maharashtra ....Respondents.

Mr. H.H. Keswani and H.K. Prem and Bharat Vora,
advocates for the petitioner.

None for respondent No.1.

Ms. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 9th January, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the petitioner. None appears for respondent No.1 though they are served.

2. The petitioner is challenging the issuance of process by the Additional Chief Metropolitan Magistrate 37th Court, Esplanade, Bombay in a case filed by the respondent No.1 under section 406 of the Indian Penal Code being Case No.372/S of 1994.

3. It is submitted by the learned Counsel appearing on behalf of the petitioner that even if the allegations which are made in the complaint are taken at its face value, no case is made out under section 406 of the Indian Penal Code and the averments in the complaint disclose that it is a civil dispute between the parties.

4. I have perused the complaint which is filed by one Jangoo M. Kutky on behalf of the Company. The complainant had executed a contract with the petitioner for the manufacture of Horizontal condensers which were required by the complainant - Company. In para 9 of the complaint, it is alleged that the accused raised disputes about the specifications by his letter dated 16/12/1993 and expressed his inability to comply with the order placed by the complainant - Company. The complainant in para 16 of the complaint further averred that the

accused by his letter dated 14/3/1994 had appropriated certain amounts towards the cancellation charges though he was not entitled to do so in law as there was no provision for the same in the contract. It was alleged that, therefore, this misappropriation of the amount towards the cancellation charges amounted to an offence under section 406 of the Indian Penal Code.

5. In my view, from the perusal of the averments made in the complaint, it does not disclose even prima facie the commission of an offence under section 406 of the Indian Penal Code. At the highest, it could be said that there was breach of contract for which the complainant could have filed a civil suit for the recovery of the said amount. There was a written contract between the parties and the dispute was raised by the complainant - Company regarding the amount of Rs 1,56,000/- which was paid by the complainant to the petitioner. Thus, the submission made by the learned Counsel appearing on behalf of the petitioner will have to be accepted. The process which is issued by the Additional Chief Metropolitan Magistrate, 37th Court, Esplanade, Bombay is quashed. The Criminal Application is allowed in terms of prayer clause (i) and Criminal Case No. 372/S/1994 is quashed.

6. Criminal Application is disposed of in the above terms.

V.M. KANADE, J.